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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

HAVENS REALTY CORPORATION and ROSE JONES,

Petitioners,

vs.

SYLVIA COLEMAN, R. KENT WILLIS and HOUSING OPPORTUNITIES MADE EQUAL,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF FOR THE LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES AS AMICUS CURIAE

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BRIEF FOR THE LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

With the consent of the parties, the Leadership Council for Metropolitan Open Communities submits this brief as *amicus curiae* in support of the respondents, urging affirmance of the judgment of the United States Court of Appeals for the Fourth Circuit.

The Leadership Council for Metropolitan Open Communities (hereafter "Leadership Council") is a not-for-profit corporation organized in 1966 under the laws of the State of Illinois. Its board of directors consists of leaders of business, labor, government, religion, civil rights and housing.*

* Thomas G. Ayers, Chairman, Executive Committee, Commonwealth Edison Company; Edwin C. Berry, Assistant to the President, Johnson Products Co., Inc.; Frederick G. Jaicks, Chairman, Inland Steel Company; Marshall B. Front, Partner, Stein, Roe & Farnham; James J. O'Connor, Chairman, Commonwealth Edison Company; James O. Webb, Senior Vice President, Blue Cross Blue Shield; James W. Compton, President, Chicago Urban League; E. Stanley Enlund, Chairman, First Federal Savings & Loan Association; Warren H. Bacon, Assistant Director, Manpower Administration, Inland Steel Company; Patricia Banks, Attorney; Edward Billingsley, Edward Billingsley & Associates; Jorge H. Boada; James J. Brice, Co-Chairman, Arthur Andersen & Company; Allison S. Davis, Davis, Miner & Barnhill; Irving M. Gerick, Vice President, BA Mortgage and International Realty Corporation; Robert H. Gerstein, Partner, Holleb & Goff; Stanford L. Glass, Partner, Holleb & Goff; Ronald V. Greer, Vice President, Continental Illinois Bank; Elwin J. Griffith, Dean, DePaul College of Law; Hon. Virginia M. Hayter, President, Hoffman Estates; Ben W. Heineman, President, Northwest Industries; Kenneth M. Henderson, Executive Director, Chicago United; Peter M. Husting, Management Director, Leo Burnett Company; Daniel E. Levin, Partner, McHugh-Levin Associates; Rev. William J. Lion, Executive Director, Illinois Catholic Conference; Marion W. Maner, President, Century 21-Maner Realty; Gwendolyn R. Martin, Administrative Assistant, Communications Workers of America; Rabbi Robert J. Marx, Congregation Solel; James J. McClure, Gardner, Carton & Douglas; Hon. Dawn C. Netsch, Senator, State of Illinois; Richard B. Ogilvie, Isham, Lincoln & Beale; Roger L. Plummer, Vice President, Residence, Illinois Bell Telephone Company; Rt. Rev. Quintin E. Primo, Suffragan Bishop, Episcopal Diocese of Chicago; Muriel F. Smith; Dr. Charles Spivey, Pastor, Coppin AME Church; James B. Strenski, Chairman, Public Communications, Inc.; Charlie Thurston, Division Vice President, Northern Illinois Gas; Robert L. Tucker, Tucker & Watson; Betty Wilhoite, President, League of Women Voters of Chicago; James L. Wright, Director, Region Four, United Auto Workers.

Its principal goal is the creation of a single, nondiscriminatory housing market in the Chicago metropolitan area.* A substantial part of its efforts to this end is the Legal Action Program, which since 1969 has provided legal counsel on behalf of minority homeseekers, community fair housing organizations, municipalities and others seeking open housing under the law, in cases under the Fair Housing Act of 1968, the Civil Rights Act of 1866 and Constitutional provisions.

In obtaining relief for over 600 such plaintiffs, the Legal Action Program of the Leadership Council has dealt with cases which have clarified fair housing laws. *See Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). The Leadership Council has often been called upon to assist others in their efforts to eliminate housing discrimination outside the Chicago metropolitan area. Housing discrimination is a nationwide problem and the Leadership Council has particular expertise in this area of the law.** On the basis of this extensive experience in Chicago and throughout the nation, the Leadership Council believes that community fair housing organizations have a significant role to play in enforcement of fair housing laws as "private attorneys general," *see Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972). It may be necessary in certain circumstances for such organizations to file suit on their own behalf and on behalf of their members to obtain full enforcement and to achieve the purposes of the fair housing laws.

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* The Chicago metropolitan area for this purpose includes six counties in Illinois, Cook, DuPage, Lake, Will, McHenry and Kane, and two in Indiana, Lake and Porter.

** The Leadership Council has since 1971 published the Guide to Practice Open Housing Law, a lawyer's guide to fair housing cases, now in its third edition.

It is the view of the Leadership Council that the decision of the Fourth Circuit correctly resolved several issues which are vital to the continued enforcement of the fair housing laws by organizations like Housing Opportunities Made Equal (HOME), which is similar to many of the client organizations who have been assisted by the Leadership Council. The purpose of the Leadership Council's participation as *amicus* is to urge affirmance of the decision of the Fourth Circuit, and in particular to support and augment the position of the respondents on the issues of HOME's standing to sue both for its own injury and as a representative of its members.

The petitioners' reliance on the narrow ruling with respect to the Leadership Council's standing by the Seventh Circuit in *Village of Bellwood v. Gladstone Realtors*, 569 F.2d 1013 (7th Cir. 1978), is misplaced.* (Brief for Petitioners p. 21.) In *Bellwood* the Leadership Council alleged only that it is a not-for-profit organization with a desire to further open housing. It did not allege the full range and scope of its program nor did it rely on any contracts or arrangements with governmental agencies. The Seventh Circuit did not review all the elements of standing here being considered. Although the *Bellwood* case may be distinguished on the facts,** such an inquiry is not necessary because of the difference between the Leadership Council and HOME in terms of their structure and functions. The Leadership Council

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* The issue of the Leadership Council's standing was not raised on certiorari to this Court. *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 98 n.5 (1979).

** For example, the individual plaintiffs in this case are HOME employees, while in *Bellwood* none of the plaintiffs alleging injury had any connection with the Leadership Council. The individual plaintiffs in *Bellwood* who had standing were not members of the Leadership Council. Similar persons are members of HOME and just as they have standing on their own, they thereby confer standing on the HOME organization.

is not itself a community-based fair housing organization, but it provides legal representation to many organizational clients who are the same as HOME. The Leadership Council supports the position that HOME fully meets the requisites of standing.

SUMMARY OF ARGUMENT

The Court of Appeals for the Fourth Circuit correctly held that HOME has standing to sue under the Fair Housing Act of 1968, 42 U.S.C. §3601 *et seq.*, for its own injury incurred as the result of the petitioners' racial steering practices. HOME's counseling, referral and informational housing services performed under contract with the City of Richmond make HOME's activities an extension of the City's services to the Richmond community, and the petitioners' conduct has frustrated the effectiveness of those services. The distinct and palpable injury to HOME's ability to carry out its programs in pursuit of the Congressionally mandated goal of equal access to housing, the impairment of HOME's performance of its contractual duties, and the direct loss of resources expended to identify and counteract the petitioners' discriminatory practices, are injuries for which HOME has standing to seek redress under the Fair Housing Act.

HOME also has standing to sue as the representative of its members. In *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333 (1977), the Court developed a three-part test to determine whether an association has standing as the representative of its members. First, the members of the organization must have standing. Petitioners' actions have deprived HOME's members of the benefits of living in a stable, integrated society. Second, the interests which the organization seeks to assert must be

germane to its purpose. The purpose of HOME is to eliminate racial discrimination in housing in the Richmond area, which is the same as the interests of its members in this suit. Third, neither the claim asserted nor the relief requested requires the participation of individual members. The claim of each member arises from the same set of facts. The injunctive relief requested by HOME does not require any individual determination of fact. The suit by HOME will expeditiously resolve the claims of all of its members in a single action and protect petitioners from a multiplicity of suits.

ARGUMENT

I.

HOME HAS STANDING TO SUE UNDER THE FAIR HOUSING ACT FOR ITS OWN INJURY.

Respondent HOME is a not-for-profit corporation which was organized to effectuate the purposes of the Fair Housing Act of 1968 and other fair housing laws. Its members number approximately 600 in the Richmond, Virginia metropolitan area. Its activities include researching and investigating conditions in the Richmond housing market, counseling homeseekers with respect to available housing, preparing pamphlets regarding housing availability in the Richmond area, counseling persons who have been discriminated against and designing and carrying out fair housing programs including legal and administrative action. Its work is funded by private donations, fees and contracts with governmental agencies. *Coles v. Havens Realty Corporation*, 633 F.2d 384, 385 (4th Cir. 1980).

HOME has entered into a series of contracts with the City of Richmond to provide fair housing services to the City. These contracts, dating back to 1974, provide for

payment of some $400,000 to HOME for such services.* Some of this work has been completed and other work under the contracts is being done on a continuing basis. Many of the activities of HOME under the agreements with the City would have to be done by City staff if HOME's services were not available.

The City of Richmond has selected HOME to do this work because of its experience in fair housing and because it has a trained staff and community support for its programs. In order to duplicate the expertise of HOME, the City would be required to expend large sums of money and use costly municipal facilities without any recognizable return for such additional expense. HOME can provide these housing services less expensively and more professionally.

Moreover, by using HOME the City leverages each dollar because HOME is engaged in additional activities funded by sources other than the City of Richmond. The City receives residual benefits from HOME's other programs, which supplement and make more effective the work done for the City. For example, among other things HOME investigates the real estate market in the Richmond area on a continuing basis to determine if discrimination is taking place and to identify the form of any such discrimination. The contracts with the City require HOME to obtain certain specific information, but the facts otherwise obtained by HOME and not paid for by the City help make the City's information more useful.

HOME has standing to bring this action because of its unique position with the City of Richmond as an exten-

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* HOME was precluded from presenting evidence on these particulars by the early dismissal, but they are contained in the public record. See Richmond City Council Ordinance No. 77-58-69.

sion of the municipality. It is unlikely that anyone would question a suit by the City based on the same or similar facts if members of the staff of the City were thwarted in their fair housing efforts. HOME acts for the City, carrying out the dictates of the City in order to help them meet the requirements of federal laws and regulations. Actions to stop discriminatory practices are a logical extension of the duties prescribed by the contracts with the City of Richmond.

In addition, HOME has standing based on its activities apart from what it does under agreements with the City. Unlike some private special interest groups that develop their own goals and agendas, HOME has as its purpose carrying out goals established by the Congress of the United States, the legislature of the State of Virginia, and the City of Richmond. There is no infirmity like that attributed to private groups who are following their own dictates.*

An organization such as HOME has standing to seek redress for the distinct and palpable injury caused by the petitioners' racial steering practices.** They may seek relief without the burden of delineating specific pecuniary loss when there has been interference with

* In *Sierra Club v. Morton*, 405 U.S. 727 (1972), this Court held that organizations or individuals seeking standing must allege facts showing that they have "a direct stake in the outcome" of the action. 405 U.S. at 740. HOME clearly meets that test. Unlike the plaintiff in *Sierra Club v. Morton*, HOME has suffered direct harm to the effectiveness of existing programs and activities, some conducted under contract with the City of Richmond and all designed to achieve the enforcement of Congressionally mandated fair housing objectives. These services clearly distinguish HOME from organizations which "seek to do no more than vindicate their own value preferences," *Id.*

** This Court has held that "distinct and palpable injury" is the standard for an organizational plaintiff seeking to sue for its own injury. *Warth v. Seldin*, 422 U.S. 490, 511 (1975). An organization may sue "to vindicate whatever rights and immunities the association may enjoy." *Id.*

concrete efforts furthering the goals of the fair housing laws. Here respondents seek to make housing available which would otherwise be unavailable because of discrimination. *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 263 (1977). The petitioners' racial steering practices harm HOME in that the organization's functional efforts to assist equal access to housing through counseling and referral services were frustrated, causing HOME to expend still further resources to identify and counteract the petitioners' discriminatory practices.

As the Court of Appeals for the Fourth Circuit correctly held, conduct of a defendant which frustrates housing services such as those of HOME confers standing on the organization to sue under the Fair Housing Act of 1968, 42 U.S.C. §3601 *et seq.* The same kind of injury was held to confer standing on the plaintiff in *Village of Arlington Heights v. Metropolitan Housing Development Corporation, supra.* As the Court of Appeals said:

> Although HOME's goals cannot be equated with brick and mortar, they are functional, requiring identifiable action and the expenditure of effort and funds which may result in success or failure in achieving its objectives. Its "projects" therefore provides [sic] that "essential dimension of specificity" that informs judicial decision making, as described in *Arlington Heights.*

Coles v. Havens Realty Corporation, 633 F.2d 384, 391 (4th Cir. 1980).

In addition, the fact that HOME has devoted resources both to its contractual fair housing projects and its efforts to counteract the petitioners' discriminatory practices is the very kind of direct harm for which an aggrieved party has standing to seek redress. Together with the harmful effect of the petitioners' conduct on the effectiveness of HOME's services, expenditures of resources are losses which may be recovered by HOME under the Fair Housing Act.

HOME's Standing Is Particularly Important To Vindicate A Congressional Policy

It is particularly important that HOME's standing be upheld in light of the particularly pernicious nature of racial steering, which is widespread and extremely difficult to detect and prove. Standing under the Fair Housing Act is as broad as is permitted under Article III. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972). In *Trafficante* this Court pointed out that the "main generating force" for enforcing the Act "must be private suits in which . . . the complainants act not only in their own behalf but also as private attorneys general in vindicating a policy that Congress considered to be of the highest priority." 409 U.S. at 211. *See also Gladstone Realtors v. Village of Bellwood*, 411 U.S. 91, 109 (1979).

Organizational standing is especially important with respect to racial steering, where the individuals most directly aggrieved are, for various reasons, in a poor position to assert their claims in court. A black person who is shown home listings in particular neighborhoods (often predominantly white areas which have only recently been targeted for racial transition by area realtors) has no way of knowing what listings are being made available to whites and can therefore seldom compare his experiences with those of his white counterpart to detect discrimination. Likewise, the white resident who flees an area disrupted by steering often loses interest in that community and as a result may be disinclined to join in efforts to stop the practice of steering.

Accordingly, most of the cases involving racial steering have of necessity been brought either by the United States, municipalities or organizations. *See, e.g., Park View Heights v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972) and 605 F.2d 1033 (8th Cir. 1979); *Zuch v. Hussey*, 366 F. Supp. 553 (E.D. Mich. 1973) and 394 F.

Supp. 1028 (E.D. Mich. 1975) *aff'd.*, 547 F.2d 1168 (6th Cir. 1976); *Heights Community Congress v. Rosenblatt Realty*, 73 F.R.D. 1 (N.D. Ohio 1975); *Village of Park Forest v. Fairfax Realty Co.*, P.H.E.O.H. Rptr. ¶13,699 (N.D. Ill. 1975); *United States v. Henshaw Brothers, Inc.*, 401 F. Supp. 399 (E.D. Va. 1974); *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071 (D.N.J. 1976); *Williamsburg Fair Housing v. New York City Housing Authority*, 450 F. Supp. 602 (S.D.N.Y. 1978); *Coalition For Block Grant Compliance v. HUD*, 450 F. Supp. 43 (E.D. Mich. 1979); *Village of Arlington Heights v. Metropolitan Housing Development Corporation, supra.*

A new limitation on standing of homeseekers who are able to learn that they have been "steered" and who have both the will and the resources to sue would hamper efforts to deal with the pervasive problem of racial steering. This problem is even more difficult when, as here, the steering practices involve rental apartment units. In order for the respondents to vindicate rights under the Fair Housing Act, and eliminate racial steering with respect to rental residential property in Henrico County, Virginia, HOME must be accorded standing.

II.

HOME HAS STANDING TO SUE AS A REPRESENTATIVE OF ITS MEMBERS.

HOME is also challenging petitioners' unlawful practices on behalf of its members. The Fourth Circuit Court of Appeals held that HOME had standing to challenge the unlawful practices of the petitioners as the representative of its membership.

HOME falls within the basic rule for representational standing set down in *Warth v. Seldin*, 422 U.S. 490

(1975) and elaborated upon in *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333 (1977). In *Warth*, individual and organizational plaintiffs from the Rochester, New York area claimed that a zoning ordinance passed by the town of Penfield excluded persons of low and moderate income from living in the town. The Court stated:

> Even in the absence of injury to itself, an association may have standing solely as the representative of its members . . . The possibility of such representational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy . . . The association must allege that its members, or any of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit . . . So long as this can be established and so long as the nature of the claim and of the relief sought does not make individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

422 U.S. at 511. In *Hunt*, an association of Washington applegrowers created by the state sought to declare unconstitutional a North Carolina statute which had the effect of damaging the Washington applegrowers' North Carolina market. The Court established a three-part test for representational standing:

> [A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

432 U.S. at 343.

The application of the *Hunt* and *Warth* holdings to the present case clearly demonstrates that HOME has standing to pursue its members' claims.

Paragraph 16 of respondents' Complaint states:

> HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices in violation of the Fair Housing Act of 1968 . . . (App. 17-18)

This allegation satisfies the first part of the *Hunt* test. In plain terms HOME's standing is based on the injury caused by the petitioners' unlawful practices. The petitioners' attack on the pleading is apparently based in part on their objection to the allegations that interracial contacts have been affected by petitioners' actions. No greater degree of particularity is required in these pleadings. The respondents do state that petitioners' practices have deprived HOME members of certain benefits incident to living in an integrated community. HOME members live in areas where the racial balance has been adversely affected by petitioners' discriminatory practices. In *Gladstone v. Bellwood*, 441 U.S. 91 (1979), standing was conferred on individuals with a claim nearly identical to the one made by HOME's members.*

Petitioners also mistakenly assert that there is no causal connection alleged between injury to HOME members

* In that case, the Leadership Council did not assert representational standing, although the Court of Appeals noted that such an assertion, in a proper case, would confer standing. *Village of Bellwood v. Gladstone Realtors*, 569 F.2d 1013, 1017 (7th Cir. 1978); *see also Health Research Group v. Kennedy*, 82 F.R.D. 21, 26 (D.D.C. 1979).

and petitioners' unlawful acts. Respondents complain of petitioners' discriminatory practices which contribute to segregated housing patterns and inhibit the development of stable integrated communities. This allegation supplies the direct causal connection needed.

Furthermore, petitioners exaggerate the role of pleadings in determining standing.* Just as plaintiffs are not required to plead minute facts to support the elements of a cause of action, they need not plead all of the details with respect to standing. To place such emphasis on the complaint would exalt form over substance. When a defendant challenges a plaintiff's standing, affidavits to supply particularized facts may be filed. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 489 n.2 (E.D.N.Y. 1977); *see also Warth v. Seldin*, 422 U.S. at 501-502 (1975). Alternatively, an amendment to the complaint can be provided. Pleadings are not an end in themselves but merely a means to a just resolution of a dispute. *Rochambeau v. Brent Exploration, Inc.*, 79 F.R.D. 381, 386 (D. Colo. 1978). *See also Sierra Club v. Morton*, 405 U.S. 727, 735-36 n.8 (1972).

In *Gladstone v. Bellwood*, individuals deprived of the social and professional benefits of living in an integrated society alleged injury sufficient to confer standing. The individual plaintiffs in *Bellwood* alleged they resided in communities affected by defendants' unlawful practices. 441 U.S. at 111-115. The same is true for the members of HOME.

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* In *Fair Housing Council of Eastern Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071, 1074 n.2 (D.N.J. 1976), the court relegated to a footnote the observation that plaintiffs did not specify how many members of the Council resided in Bergen County. This fact was not an obstacle to standing.

The second part of the *Hunt* test inquires into whether the interests which the organization seeks to protect are germane to its purposes. Clearly HOME meets this requirement. The purpose of the second part of the test is to assess the interest asserted to determine if it is one that the claimant can properly assert as a true representative. *Boyce v. Rizzo*, 78 F.R.D. 698, 704 (E.D. Pa. 1978); *see also Health Research Group*, 82 F.R.D. at 28. The stated purpose of HOME is to eliminate discrimination in the housing market of Richmond, Virginia. In order to accomplish that purpose it operates a housing counseling service for people of all races, investigates charges of housing discrimination referring complaints to appropriate authorities, and operates a fair housing program designed to eliminate discriminatory housing practices. *Coles*, 633 F.2d at 385.

Petitioners apparently argue that because HOME has an interest in fair housing generally, its interests are not sufficiently parochial to represent the more personal interests of its members in this suit. The contention is totally without merit. While many of HOME's activities benefit non-members, its members who are residents of the Richmond area count on the organization to protect their rights. The success of the organization depends on the financial and program support of its members. The members' rights are of vital concern to HOME. Their interests, which HOME seeks to protect in this litigation, are clearly germane to its purposes.

In *Huertas v. East River Housing Corp.*, 81 F.R.D. 641 (S.D.N.Y. 1979), two organizations created for the purpose of securing housing for people of low and moderate income were granted standing. Noting the purposes of these organizations, the Court stated:

> These organizations, then, have even a more direct relation to the type of violation alleged here than would a general purpose civil rights group.

Id. at 649.

Standing is not weakened because the organization's activities are of general benefit to the community and not just to its members. In *Consumers Union of United States, Inc. v. Miller*, 84 F.R.D. 240 (D.D.C. 1979), the members of the Union represented only a portion of those interested in having a Federal Reserve System regulation held void. Nevertheless, the Court granted the Union standing. *Miller*, 84 F.R.D. at 244.

In the *Fair Housing Council* case, *supra*, a non-profit membership association dedicated to the promotion of equal opportunity in housing had standing to seek to stop those who contributed to segregated housing patterns:

> The Fair Housing Council may, however, establish standing as the representative of those of its members who have been injured in fact. The determination required is whether or not the interests of the individual plaintiffs to be free from discriminatory housing practices is sufficiently close to the interests of the Fair Housing Council to give the latter standing. In this case the interests of the organization and the individual plaintiffs are not only sufficiently close, they coincide. Both seek to be free from discriminatory practices by multiple listing services and real estate brokers. Therefore, the Fair Housing Council has standing to sue to assert the rights of the individual plaintiffs who in their own right have standing to sue.

Fair Housing Council, 422 F. Supp. at 1083.

The third element of the *Hunt* test is an inquiry into whether the organization can obtain a fair resolution of the controversy or if the determination requires participation of the association's individual members. Whether this component of the test is satisfied depends in substantial measure on the nature of the relief sought, and whether this relief, if granted, will inure to the benefit of the injured members. *See Warth*, 422 U.S. at 515, and *Huertas*, 81 F.R.D. at 649. HOME has requested

only injunctive relief for its members. There is no need to make any individualized determination of damages or injunctive relief. The harm suffered is common to all injured HOME members, and the remedy requested can reasonably be expected to benefit these individuals. Such a community organization has standing to represent those deprived of the benefits of living in an integrated society by defendants' conduct. *See Heights Community Congress v. Rosenblatt Realty Co.*, 73 F.R.D. 1 (N.D. Ohio 1975).

Petitioners raise a question with respect to the *res judicata* effect of a judgment in this case. *Res judicata* will bar a subsequent suit as to the issues raised here. Identity of issues is present when questions litigated and resolved in the prior proceeding are raised again in a subsequent proceeding. *Southern Pacific Railroad v. United States*, 168 U.S. 1, 48-49 (1897). Identity of parties is determined by due process considerations. It is not necessary that one must have been a party to both proceedings for *res judicata* to be invoked. The test is whether the interests of the party sought to be bound were adequately represented by another vested with authority of representation. *Expert Electric Company v. Levine*, 554 F.2d 1227, 1233 (2d Cir. 1977). *See also Chicago Midwest Meat Association v. City of Evanston*, 589 F.2d 278, 281 n.3 (7th Cir. 1978).

Where an association is a fair representative of its members, the members are bound by any judgment obtained by the association. The second and third components of the *Hunt* test are directed toward this inquiry. Since HOME clearly meets the *Hunt* test, its members will be bound by any judgment in this case. This will protect the petitioners from multiple suits arising from the same facts. It will assist the members in asserting their rights, just as a class action would, by allowing them to share the burden of litigation and

affording them a better opportunity to obtain effective results.

The petitioner proposes that another facet of the third element of the *Hunt* test is whether the interests of the association's members are too diverse to be represented by the association. Notwithstanding the dubious applicability of petitioners' argument,* there is no significant diversity of interest among HOME members. By joining HOME, members have expressed their desire to live in an open and integrated community. Petitioners have contributed to the deprivation of these benefits by their racially discriminatory practices. The members of HOME have banded together to obtain more than an order commanding petitioners to comply with the law. They want the violators to institute affirmative marketing practices to rectify the disruption of the community's racial balance caused by petitioners. *See Coles*, 633 F.2d at 385.

Petitioners claim that those non-members of HOME who were directly discriminated against will not be bound by any judgment obtained by HOME. Therefore, they argue, judicial economy will not be promoted and thus associational standing should not be granted. In the

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* In support of this proposition petitioners cite *Associated General Contractors of North Dakota v. Otter Tail Power Company*, 611 F.2d 684 (8th Cir. 1979) and *National Constructors Association v. National Electric Contractors Association*, 498 F. Supp. 510 (D.Md. 1980) (Brief for Petitioner, p. 15). However, the court in *National Constructors Association* rejected the proposition that mere diversity of interests among members precludes representational standing. In commenting on this, the court stated:

> The plain language of *Hunt's* third prong does not warrant such a holding. To the extent Associated General Contractors implies a different result, this court is not inclined to follow the Eighth Circuit's lead . . .

National Constructors Association, 498 F. Supp. at 521-22.

context of this case, petitioners' argument is totally without meaning. All those conceivably entitled to relief are before the Court and will be bound by any decision. If another direct victim of petitioners' discriminatory actions would seek relief, this victim could not, of course, rely on the evidence in this case but must present evidence showing he or she received discriminatory treatment. This direct victim would not be bound by any judgment obtained by HOME because there would be no identity of issues. Moreover, an organization need not represent all injured parties in order to have standing. Many cases have granted associations representational standing where the defendant's acts affected non-members of the association. *E.g., Sierra Club v. Mason*, 351 F. Supp. 419 (D. Conn. 1972) and *Consumers Union of United States v. Miller*, 84 F.R.D. 240 (D.D.C. 1979).

By a simple application of the test for representational standing set out in *Hunt*, it is clear that HOME has standing to sue as the representative of its members. This would protect the members' rights by allowing them to consolidate their identical claims and would protect the petitioners from multiple suits.

CONCLUSION

For the foregoing reasons, *amicus* respectfully submits that the decision of the Fourth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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